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SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 30

FLORENCE J. M. COOK, PETITIONER,

vs.

ARTHUR W. COOK

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF VERMONT

PETITION FOR CERTIORARI FILED FEBRUARY 13, 1951.

CERTIORARI GRANTED APRIL 23, 1951.

SUPREME COURT OF THE UNITED STATES

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[fols. 1-2]

IN WINDSOR COUNTY COURT, STATE OF VERMONT

Docket No. 352

ARTHUR W. COOK

vs.

FLORENCE J. M. COOK

PETITION FOR ANNULMENT

DOCKET ENTRIES

EVERETT L. HATHORN

With draw 3/2/50, Fucci & Fucci, 3/2/50

Entered January 4, 1950—Summons December 16, 1949.
Order for Publication issued December 16, 1949.
No minor children.
Affidavit of publisher filed January 17, 1950—Order for publication complied with.
December Term 1949—

March 2, 1950. Heard. Miles, P. J., Taylor, J. Libellant files motion to amend petition. Amendment allowed and petition amended as per motion.

March 3, 1950. Hearing resumed. Hearing continued to March 27, 1950 at 9:30 A.M.

March 6, 1950. Petitionee's motion for expenses and suit money filed.

March 20, 1950. Order of Court with acceptance of service filed.

April 3, 1950. Order of March 9, 1950 for payment of $250.00 by Petitioner to Petitionee complied with in open court. Hearing resumed. With Court.

April 12, 1950. Letter of Attorney for the Petitioner filed. Petitioner's request for findings of fact filed. Petitioner's brief filed.

May 27, 1950. Findings of fact filed.

June 2, 1950. Petitioner's exceptions to findings filed.

June 5, 1950. Petitionee's motion for judgment filed.

June 16, 1950. Petitionee files motion for fees.

June 22, 1950. Decretal Order filed. Purported marriage of Feb. 5, 1943 is null and void. As to the marriage of Dec. 18, 1944, the petition is dismissed.
June 23, 1950. Hearing on Petitionee's motion for fees. Cushing, P. J. Order made that the petitioner pay to petitionee's attorneys, Fucci & Fucci, the sum of $300.00 in 3 Payments. First payment due August 1, 1950—Second payment due September 1, 1950 and third payment due October 1, 1950. Exceptions to petitionee. Petitioner's exceptions to judgment filed July 13, 1950.
July 20, 1950. Petitioner's Bill of Exceptions filed.
July 31, 1950. Certificate to Clerk of the General Term of Supreme Court issued.
September 21, 1950. Fifteen printed copies of the Case filed by libellant. Fifteen printed copies of libellant's brief filed.
October Term 1950—Heard and With Court, Adams, J.
November Term 1950—Judgment that the purported marriage between the parties of February 5th, 1943 is null and void, is affirmed. Judgment that the petition is dismissed as to the Marriage of December 18th, 1943, is reversed. It is adjudged that the purported marriage between the parties of December 18, 1943 is null and void.

[fol. 3] IN WINDSOR COUNTY COURT

[Title omitted]

PETITION FOR ANNULMENT

To the Honorable Windsor County Court, holden at Woodstock, within and for the said County of Windsor and the State of Vermont, comes Arthur W. Cook, of Windsor and respectfully represents that:

1. That he is a resident of the Town of Windsor, and the State of Vermont, and has resided continuously therein for the past several years prior to the date of this petition, but has been absent therefrom since January 1st, 1939, by reason of his service with the United States Navy.

2. That on the 6th day of February, 1943 at Elizabeth City, North Carolina, he, the said Arthur W. Cook, was

joined in marriage with one Florence Jean Monteford, then residing at Philadelphia, Pennsylvania.

3. That the said parties lived together as husband and wife at Newport News, Virginia, where your petitioner was temporarily stationed by the United States Navy, until about the 1st day of June, 1943.

4. That on or about the 1st day of June, 1943, your petitioner learned that the said Florence J. M. Cook, was, at the time of her marriage to him, married to another man named, Alfred H. Mann, and that the said Mann was still living and that the marriage had never been dissolved.

5. That upon discovering the said Florence J. M. Cook was married, and had a husband, living, your petitioner immediately disaffirmed his said marriage and refused to cohabit with the said Florence J. M. Cook.

6. That on the 18th day of December, 1943 the said Florence J. M. Cook represented to the said Arthur W. Cook, that she had been legally divorced from the said Mann and was free to marry and the said parties, Arthur W. Cook and Florence J. M. Cook, on the 18th day of December, 1943, at Elkton, in the County of Cecil, in the State of Maryland were again joined in marriage.

7. Your petitioner further represents that the representations made by the said Florence J. M. Cook to him on the 18th day of December, 1943, were wholly false and made by the said Florence J. M. Cook for the express purpose of [fol. 4] inducing the said Arthur W. Cook to marry her the second time and the said Florence J. M. Cook threatened the said Arthur W. Cook with prosecution of certain criminal offenses of which, at that time, the said Arthur W. Cook believed hi self to be guilty, if he refused to marry her the second time and that the sole purpose of your petitioner, Arthur W. Cook entering into the said second marriage was to protect himself from what he thought the said Florence J. M. Cook would do if he refused to marry her on the said 18th day of December, 1943.

8. That since the 18th day of December, 1943 your petitioner has learned that the said Florence J. M. Cook did not secure a divorce from the said Mann, but is still married to him.

9. That your petitioner further avers that he does not know of the actual whereabouts of the said Florence J. M. Cook, although he has made diligent effort so to learn.

10. That no libel for divorce, libel for divorce from bed and board, petition for seperate maintenance or petition for annulment of marriage has been brought previously by either the said Arthur W. Cook, or the said Florence J. M. Cook, except a Libel for divorce brought by the present petitioner, Arthur W. Cook, in the Territory of Hawaii, which was discontinued, and a Libel for Divorce brought by Arthur W. Cook against Florence J. M. Cook in the Windsor County Court, which Libel was never entered in the Court, and a prior petition for annulment which was entered and discontinued due to lack of service on the said Florence J. M. Cook.

Therefore, your petitioner, Arthur W. Cook, respectfully prays that this Honorable Court will issue to him a decree, decreeing the said marriages solomnized between the said parties on the 6th day of February, 1943, and on the 18th day of December, 1943, to be null and void, and to grant the said petitioner, Arthur W. Cook such further relief as shall to the said Court seem just and equitable.

Dated at Windsor in the said County this 3rd day of December, 1949.

(S.) Arthur W. Cook, Petitioner.

STATE OF VERMONT,
Windsor County, ss.

At Windsor this 3rd day of December, 1949, Arthur W. Cook, personally appeared before me and made oath to the foregoing petition.

(S.) Leon A. Hitchcock, Notary Public.

[fol. 5] IN WINDSOR COUNTY COURT

[Title omitted]

AFFIDAVIT OF ARTHUR W. COOK

Now comes Arthur W. Cook, petitioner in the above entitled cause, and upon his oath disposes:

1. That he, the said Arthur W. Cook, does not know the whereabouts of the said Florence J. M. Cook, mentioned in the said petition and has no means of ascertaining her whereabouts.

2. That the said Florence J. M. Cook, receives mail at 396-26th Street, Oakland, California, which is the home of her sister, which mail is forwarded to her at an address unknown to the said Arthur W. Cook, and the said sister refuses to reveal the whereabouts of the said Florence J. M. Cook.

3. That he, the said Arthur W. Cook, has attempted to ascertain the whereabouts of the said Florence J. M. Cook, by making inquiries of her relatives, particularly her sister, and has been refused information relative to her whereabouts. The said Arthur W. Cook has a brother residing very close to the last known residence of the said Florence J. M. Cook, to wit at 396-26th Street in Oakland, California and that the said brother at the request of the said Arthur W. Cook, caused a search to be made for the said Florence J. M. Cook or any information leading to her whereabouts, by a hired detective, and such search failed to locate the said Florence J. M. Cook or to disclose any information indicative to her whereabouts.

4. That the said Arthur W. Cook further avers that inquiries have been made of the Sheriff's Department in Oakland, California where the said Florence J. M. Cook is last known to have resided and that the said Department was unable to locate the said Florence J. M. Cook, or to learn of her wher-abouts.

5. That the said Arthur W. Cook has made a diligent inquiry and does not know where the Libellee, Florence J. M. Cook resides.

Therefore, the said Arthur W. Cook respectfully prays that the Clerk of this Honorable Court issue an order for notice by publication in accordance with Section 3225 of the Revised Statutes of Vermont.

[fol. 6] Dated at Windsor, in the County of Windsor and in the State of Vermont, this 9th day of December, 1949.

(S.) Arthur W. Cook

Duly sworn to by Arthur W. Cook. Jurat omitted in printing.

[fol. 7] IN WINDSOR COUNTY COURT

SUMMONS

STATE OF VERMONT,
Windsor County, ss:

To any Sheriff or constable in the State, Greeting:

By Authority of the State of Vermont, you are hereby commanded to summon Florence J. M. Cook, whereabouts, unknown, to appear before the County Court, holden at Woodstock, in the County of Windsor, in the State of Vermont, and also notify her to cause her appearance to be entered with the Clerk of said Court, at his office in Woodstock, in the County of Windsor, in the State of Vermont, on or before the expiration of twenty-one days from the date of service hereof, then and there in said Court to answer the foregoing Petition for Annulment of Arthur W. Cook, of Windsor in the County of Windsor, in the State of Vermont, and to show cause, if any she may have, why the prayers of said Petition should not be granted.

Fail not, but service and return make within twenty-one days from the date hereof.

Dated at Woodstock, in the County of Windsor, this 16th day of December, A.D., 1949.

(S.) George C. Brockway, Clerk.

[fol. 8] IN WINDSOR COUNTY COURT

[Title omitted]

ORDER FOR PUBLICATION

Whereas, Arthur W. Cook of Windsor in the County of Windsor and State of Vermont, has duly filed his Petition For Annulment of Marriage in the County Court of said Windsor County, setting forth his marriage to Florence J. M. Cook, formerly of Newport News in the State of Virginia and now of parts unknown; that he hath resided for 6 full years last past in the State of Vermont and for at least six months in the County of Windsor; that the purported marriage between these parties was performed

on Feb. 6, 1943 at Elizabeth City, North Carolina; that on the 1st day of June, 1943, the said Arthur W. Cook learned that the said Florence J. M. Cook was, at the time of the marriage, was married to another man, named Alfred H. Mann, and that the said Alfred H. Mann was then living and the marriage had not been dissolved. The said Arthur W. Cook then disaffirmed the marriage and ceased to live with the said Florence J. M. Cook. That on the 18th day of December 1943, the said Florence J. M. Cook represented to the said Arthur W. Cook that she had been divorced from the said Alfred H. Mann and the said Arthur W. Cook and the said Florence J. M. Cook were again joined in marriage and later the said Arthur learned that she had not been divorced.

The Petition for Annulment further sets forth that no libel for divorce, libel for divorce from bed and board, petition for separate maintenance or petition for annulment of marriage has been brought previously by either of these parties except, a Libel for Divorce brought by the present petitioner, Arthur W. Cook, in the Territory of Hawaii, which was discontinued, and a Libel for Divorce brought by Arthur W. Cook against Florence J. M. Cook in the Windsor County Court, which Libel was never entered in the Court, and a prior petition for annulment which was entered and discontinued due to lack of service on the said Florence J. M. Cook.

Wherefore the, Petitioner, Arthur W. Cook, prays that the purported marriages between these parties, of February 6, 1943 and December 18, 1943 be adjudged as null and void and a decree of nullity be issued.

[fol. 9] And it appearing to the clerk of this court, upon satisfactory proof by way of affidavit, that the domicile of the said Florence J. M. Cook is unknown to the said petitioner so that said petition cannot be served upon her personally;

It is therefore ordered that the said Florence J. M. Cook be required to appear before the Windsor County Court holden at Woodstock in the County of Windsor and State of Vermont, and also to cause her appearance to be entered with the clerk of said court, at his office in said Woodstock, on January 30, 1950, then and there in said court to make answer to said petition; and that said petitioner do cause this order to be published for three successive weeks in the Vermont Journal, a newspaper

published at Windsor in said Cou y of Windsor, the last publication to be at least twenty-one days prior to the said January 30, 1950, which shall be deemed sufficient notice to the said Florence J. M. Cook.

Dated at Woodstock in the County of Windsor and State of Vermont this 16th day of December, A. D., 1949.

(S.) George C. Brockway, Clerk, Windsor County Court.

Everett L. Hathorn, Esqr., Windsor, Vermont, Attorney for the Petitioner.

[fol. 10] IN WINDSOR COUNTY COURT

[Title omitted]

PUBLISHER'S AFFIDAVIT

Now comes the Vermont Newspaper Corporation, by its clerk and upon its oath deposes:

1. That it publishes a certain newspaper known as the Vermont Journal, at Windsor, County of Windsor and the State of Vermont.

2. That the an order for notice by publication in the above entitled cause, Arthur W. Cook vs Florence J. M. Cook, was published in the said Vermont Journal for three (3) successive weeks, to wit: December 21st, 1949, December 29th, 1949 and January 5th, 1950, the last of which publications, being more than twenty-one (21) days prior to January 30, 1950. Dated at Bellows Falls, County of Windham, and in the State of Vermont, this 10th day of January, A. D., 1950.

(S.) M. Almeda Hanley, Clerk.

Duly sworn to by M. Almeda Hanley. Jurat omitted in printing.

[fol. 11] IN WINDSOR COUNTY COURT

[Title omitted]

MOTION FOR LEAVE TO AMEND PETITION

Now comes the Petitioner, Arthur W. Cook, by his attorney, and respectfully asks leave of the Court to Amend his petition in the following manner:

That paragraph number eight (8) be amended to read as follows:

"Your Petitioner further alleges that the said Florence J. M. Cook did not secure a valid Divorce from the said Alfred J. Mann, but that the said Florence J. M. Cook did secure what purports to be a decree of divorce at Miami, Florida on September 11th, 1943, but that the said Decree is void and of no force for the following reasons:

a. Because the law of the State of Florida required the complaintant to have been a bona fide resident for a period of ninety (90) days prior to instituting a Libel for Divorce, and that the said Florence J. M. Cook was not then, nor ever has been a resident of Florida, and the said Court was wholly without jurisdiction in the matter.

b. That the said Florence J. M. Cook did in the said matter falsely swear that she had been a resident of the State of Florida since December 30th, 1942, to wit at Jacksonville, Florida from the said December 30th, 1942 until April 21st, 1943 at which time she removed to Miami on the 21st day of April, 1943, that she had since reside- in Miami continuously since April 21st, 1943, and that she intended to remain permanently in Miami, Florida.

c. The said Florence J. M. Cook went to Florida for the express purpose of getting a divorce and wholly failed to establish herself as a bona fide resident of the said State of Florida.

That paragraph ten (10) of the said petition be amended by inserting therein the following allegations:

That the said Florence J. M. Cook brought a action for seperate maintenance against the said Arthur W.

Cook in Circuit Court of the First Judicial Circuit of the Territory of Hawaii, which court granted her a seperate maintenance order.

Dated at Windsor this 2nd day of March, 1950.

Arthur W. Cook, by (S.) Everett L. Hathorn, His Attorney.

[fol. 12] IN WINDSOR COUNTY COURT

[Title omitted]

MOTION FOR EXPENSES

Now comes the Petitionee, Florence J. M. Cook, by her attorneys, Fucci and Fucci, in the above entitled cause of action and respectfully represents:

1

That she is now living in Oakland, California and is without funds and is unable to obtain same to travel to Woodstock, Vermont and to pay her attorneys to properly prepare and defend the cause of action now pending against her in the Windsor County Court.

2

That her minimum travel expenses and board and room will amount to Two hundred and fifty Dollars ($250.00).

Wherefore, She prays that she may be awarded the sum of Two hundred and fifty Dollars ($250.00) from the said Petitioner, and reasonable suit money.

Dated at Hartford, in the said County of Windsor, this 6th day of March, 1950.

(S.) Florence J. M. Cook, by Fucci & Fucci, Her Attorneys.

[fol. 13] IN WINDSOR COUNTY COURT

[Title omitted]

ORDER GRANTING MOTION FOR EXPENSES

The motion of the petitionee, Florence J. M. Cook, for travel allowance in the sum of Two hundred and fifty Dol-

lars ($250.00) from Oakland, California to Woodstock, Vermont came on for hearing, and the said parties were represented by their attorneys at the said hearing, and after hearing thereon;

It is hereby ordered and decreed that the petitioner, Arthur W. Cook pay to the Petitionee, Florence J. M. Cook the sum of Two hundred and fifty Dollars ($250.00), said sum to be payable to the Petitionee upon her appearance in the Windsor County Court on March 27, 1950.

Dated at Woodstock, Vermont, this 9th day of March, 1950.

(S.) Raymond L. Miles, H. E. Taylor, Judges, Windsor County Court, December Term, 1949.

Service accepted, further service waived.

(S.) Everett L. Hathorn, Attorney for Arthur W. Cook

[fol. 14] IN WINDSOR COUNTY COURT

[Title omitted]

REQUEST FOR FINDINGS

Now comes the petitioner in the above entitled cause, by his attorney, Everett L. Hathorn and respectfully requests that the Court find the following facts:

1. That the Petitioner and the Petitionee were first married, February 5th, 1943 at Jersey City, South Carolina and at that time the Petitionee was already married and had a husband living and that the marriage between the Petitioner and the Petitionee was null and void.

2. That sometime in the Spring of 1943 the Petitioner learned that the Petitionee had a prior husband living and became apprehensive of his own situation and advised and requested the Petitionee to secure a divorce from her first husband, one Alfred J. Mann, and to then remarry the said Petitioner.

3. That the said parties at that time believed that the Petitionee could secure a valid divorce by the Petitionee temporarily staying or claiming residence in Florida and accordingly the Petitionee with the aid and assistance of the Petitioner went to Florida for the express purpose of getting a divorce.

4. That upon consulting attorneys in Florida the Petitionee found that it was necessary for a person to have a intention to remain permanently in Florida in order to gain a residence and to fulfill that requirement the Petitionee deceived the Florida Courts by testifying that she had lived in Florida for a much longer period of time than she actually had and that she had intentions of remaining in Florida permanently and making that her home when actually she had intentions of returning to the Petitioner and to remarry him.

5. That the said Petitionee did secure what purported to be a decree of divorce by deceiving the said Florida Courts as to the facts of her actual domicil.

[fol. 15] 6. That under the Florida law it was necessary for the complaining party to have actual residence in the State in order to secure a divorce and that in order for the Petitionee to gain that residence she must have an intention to live and remain in Florida and that the decree rendered by the Florida Court without such Court having jurisdiction over the martial res was then and is now null and void.

7. That the Petitioner did not know until August, 1949 as to what constituted residence in the State of Florida; but had theretofore known nothing of the misrepensentations made by the Petitionee in securing her Florida decree.

8. That the said divorce decree rendered to the Petitionee in Florida was null and void.

9. That after securing the said Florida decree the said parties were remarried on the 18th day of December, 1943, at Elkton, Maryland and that that marriage is null and void because the said Petitionee did at that time have a husband living.

Respectfuily submitted, Arthur W. Cook, by, His Attorney, (S.) Everett L. Hathorn.

[fols. 16-22] [Petitioner's briefs omitted in printing.]

[fol. 23] IN WINDSOR COUNTY COURT

[Title omitted]

FINDINGS OF FACT

This is a petition seeking the annulment of two marriages between the parties—one solemnized at Elizabeth City,

North Carolina February 6, 1943 and the second solemnized at Elkton, County of Cecil, Maryland, on December 18, 1943. The only ground relied upon is that at the time of each of said marriages the petitionee was the wife of one Alfred H. Mann. The petitioner appeared personally and by his attorney, Everett L. Hathorn, Eqr. Petitionee appeared personally and was represented by Fucci & Fucci, Esquires. Hearing was had before the Court and, upon adjournment, the case entered "With the Court".

Upon a consideration of the statements of counsel, oral testimony and the exhibits in the case, the Court finds the following facts:

1. A purported marriage was solemnized between the parties at Elizabeth City, North Carolina on February 5, 1943. Petitioner's Exhibit 1 purports to be a certified copy of the record thereof, is hereby referred to and made a part hereof and is found as a fact.

2. Thereafter they lived together in Virginia for about two months. At the time of this marriage petitioner knew the petitionee had been married before but assumed she had been divorced. The parties became acquainted in 1942 and the petitioner then knew her as Mrs. Albert Mann.

3. The petitioner is a resident of and has had a residence in Windsor, Vermont, since 1940. He has been in the United States Navy since March 8, 1938.

4. About two months after the marriage the petitioner discovered that the petitionee was the wife of Alfred H. Mann at the time of the marriage and it was then suggested by the petitioner and agreed upon by the parties that the petitionee should go to Florida, remain there long enough to establish a residence for divorce purposes, secure a divorce from Mann there and then return to the petitioner and they would marry again. Part of the expense of the trip to Florida and of the divorce action was paid by the petitioner. [fol. 24] Florida was chosen as the place where the divorce was to be obtained because Florida would be the nearest and best place to secure a divorce. The petitionee left Yorktown, Virginia, where the petitioner was and had been stationed and where the parties had lived together since their marriage in April, 1943; remained in Florida a short time; was at the Philadelphia Naval Hospital between April and August, 1943; returned to Florida in August, 1943. The petitioner went to Florida for a visit in July or August. The

petitionee was not then living in Jacksonville. The petitionee never intended to reside in Florida. Whatever time was spent by the petitionee in Florida in 1943 was solely for divorce purposes and with no intention on her part to establish a bona fide residence there, and she intended to remain there only long enough to obtain her divorce. This was understood and agreed upon by the petitioner.

5. The petitionee was granted a divorce from Mann by the Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida on September 10, 1943. This appears from Petitioner's Ex. 2, which purports to be a copy of the decree and the same hereby referred to and made a part hereof and found as a fact. By this decree Mrs. Mann was restored to her maiden name of Florence Monteford.

6. Two or three days after the decree of divorce the parties met in Newport News, Virginia. On September 10, 1943, the petitioner was stationed at Yorktown, Virginia and thereafter he saw the petitionee every day. On December 18, 1943, the parties were again married at Elkton, Maryland. This appears from the testimony and from Petitioner's Ex. 3, which purports to be a certified copy of the marriage record. It is hereby referred to and made a part hereof and found as a fact. The parties lived together for periods totaling about one year between December, 1943 and January, 1949.

7. On October 25, 1948 the petitioner instituted an action for divorce against the petitionee in the Circuit Court of the First Judicial Circuit in the Territory of Hawaii. In his petition therein he alleged under oath, among other things, that he was then and for more than two years had been a bona fide resident of the Territory of Hawaii; that he and the petitionee were legally married on or about December, 1944, in Elkton, Maryland, and that the parties last lived together as husband and wife in Honolulu, Hawaii and were living separate and apart. The petitionee filed a special [fol. 25] plea to the jurisdiction alleging that the libellant was not a bona fide resident as he alleged in his petition. This action was discontinued December 20, 1948. A certified copy of these proceedings is Petitioner's Ex. 5, and is hereby referred to and made a part hereof and found as a fact.

8. On December 21, 1948, the petitioner instituted a proceeding for separation against the petitioner in the Circuit Court for the First Judicial Circuit of the Territory of

Hawaii in which he again alleged under oath that the parties were legally married at Elkton, Maryland on or about December, 1944. What disposition was made of this action does not appear.

9. On March 29, 1949, the petitionee instituted an action for separate maintenance against the petitioner in the Circuit Court of the First Judicial Circuit, Territory of Hawaii, in which she alleged, among other things, that she and the petitioner were married at Elkton, Maryland on December 18, 1944; that both were then residents of City and County of Honolulu, Territory of Hawaii, and that the parties last lived together in Honolulu and were then living separate and apart. On April 7, 1949, a decree for the petitioner therein was entered in said cause permitting the petitioner therein to live separate and apart from the petitionee therein for a period of two years because of cruel treatment, neglect and personal indignities on the part of the petitionee therein and ordering the petitionee therein to pay to the petitioner therein $200.00 a month for six months, the first payment to be made May 1, 1949 and at the expiration of six months $150.00 per month for eighteen months. This is still in effect and the petitioner here is paying in accordance therewith. The petition and decree are Plaintiff's Ex. 6 and 8 respect*fully* and are hereby referred to and made a part hereof and found as a fact.

10. In letters written to the petitionee by the petitioner under dates of August 30 and September 2, 1948, the petitioner professes his love for the petitionee and expresses his desire that she come to live with him and in the September 2nd letter calls himself her husband. These letters are Petitionee's Exs. B and C, and so far as material hereto are referred to and made a part hereof, and found as a fact.

11. In the Spring of 1943, when the parties agreed that the petitionee should secure a divorce in Florida and when she consulted with Florida attorneys, she found that it was necessary for a person to have an intention to remain [fol. 26] permanently in Florida in order to gain a resident and to fulfill that requirement the petitionee testified that she had lived in Florida much longer than she actually had and that she had intentions of remaining in Florida permanently and making her home when actually she had intentions of returning to the petitioner and remarrying him. The petitioner knew about her intentions to return to him as soon as the divorce was obtained.

12. That the petitionee did secure what purported to be a decree of divorce by deceiving the Florida Court as to the facts of her domicile.

13. There is no evidence as to what the law of Maryland was on December 18, 1943, as to the validity of the purported Florida divorce or as to the validity of the remarriage of these parties on December 18, 1943.

14. In 1943, petitionee wrote the petitioner from Miami, Florida, what the Florida law regarding divorces was.

15. On Wednesday, March 29, 1950, the parties met in Norfolk, Virginia and that night the petitioner registered at the Gilbert Hotel in that city with the petitionee as husband and wife under the name of Mr. and Mrs. A. W. King. They slept together that night.

16. That under the Florida law it was necessary for the complaining party to have actual residence in the State in order to secure a divorce and that in order for the petitionee here to gain that residance she must have had an intention to live and remain in Florida, which she did not have.

As to the purported marriage of February 5, 1943, it is declared and adjudged to be null and void. As to the marriage of December 18, 1944 the petition is dismissed.

All the exhibits in the case are referred to and made a part of these findings insofar as material hereto, and the transcript of the evidence, if furnished, is made a part hereof, all for the purpose of testing whether the findings are warranted by the evidence and for the purpose of reviewing questions saved by exceptions during the trial.

Dated at Woodstock in the County of Windsor and State of Vermont, this 25th day of May, A. D., 1950.

(S.) Raymond L. Miles, H. E. Taylor, Judges, Windsor County Court.

[fol. 27] IN WINDSOR COUNTY COURT

[Title omitted]

PETITIONER'S EXCEPTIONS TO FINDINGS OF FACT

Now comes the Petitioner, Arthur W. Cook, by his attorney, Everett L. Hathorn, and takes exceptions to the refusal of the Court to find that the marriage solemnized

between the Petitioner and the Petitionee on December 18th, 1943 to be null and void by the reason of the Petitionee's having a husband living at that time.

The Petitioner further excepts to the ruling of the Court, contained in the Findings of Fact, dismissing the Petition as to the marriage solemnized on the 18th of December, 1943.

Dated at Windsor, Vermont, this 1st day of June A. D., 1950.

Arthur W. Cook, by, (S.) Everett L. Hathorn, his Attorney.

[fol. 28] IN WINDSOR COUNTY COURT

[Title omitted]

MOTION FOR JUDGMENT

Now comes the Defendant, Florence J. M. Cook, by her attorneys, and moves for judgment on the Findings of Fact as rendered by the Court in the above entitled matter.

Dated at Hartford, Vermont, this 3rd day of June, 1950.

Florence J. M. Cook, by (S.) Fucci & Fucci, her Attorneys.

[fol. 29] IN WINDSOR COUNTY COURT

[Title omitted]

MOTION FOR FEES

Now comes the Petitionee, Florence J. M. Cook, by her attorneys, Fucci & Fucci, in the above entitled cause of action and respectfully represents:

1

That a finding of facts were filed by the Court on May 27, 1950, which said findings dismissed the Petitioner's Annulment Petition.

2

That the Petitioner on June 2, 1950 excepted to said findings.

3

That the attorney for the Petitioner has indicated to the Petitionee's attorneys that he intends to appeal such findings to the Supreme Court, and has on June 7, 1950 filed a Bill of Exceptions.

4

That the Petitionee is informed and believes that the cost on her behalf in connection with such appeal will amount to approximately Five Hundred ($500.00).

5

That there is a motion now pending for reasonable suit fees, which said motion has not been acted upon.

6

That the Petitionee is without funds to protect her interest on such appeal and is without funds to pay her attorneys for the services rendered to date.

Wherefore, the Petitionee prays that this present motion be consolidated with the motion now pending for reasonable attorneys fees so that a hearing may be had on both motions.

Dated at Hartford, in the said County of Windsor, this 14th day of June, 1950.

(S.) Florence J. M. Cook; (S.) Fucci & Fucci, her Attorneys.

[fol. 30] IN WINDSOR COUNTY COURT

ARTHUR W. COOK

vs.

FLORENCE J. M. COOK

JUDGMENT

The above entitled cause of action came on for hearing before the Windsor County Court seeking the annulment of two marriages between the said parties. The parties appeared personally and were represented by their respective attorneys of record.

After hearing thereon, and, upon adjournment, the case was entered "with the Court".

A finding of facts by the Court was filed May 27, 1950, and as a result of such finding, it is hereby ordered, adjudged and decreed:

That the purported marriage of February 5, 1943 is null and void, and as to the marriage of December 18, 1944, the petition is dismissed.

Dated at Woodstock, in the County of Windsor and State of Vermont, this 22nd day of June, A. D. 1950.

(S.) Raymond L. Miles, H. E. Taylor, Judges, Windsor County Court.

[fol. 31] IN WINDSOR COUNTY COURT

[Title omitted]

PETITIONER'S EXCEPTIONS TO JUDGMENT ORDER

Now comes the Petitioner, by his attorney, Everett L. Hathorn, and excepts to the Judgment Order filed the 22nd day of June, A. D., 1950, dismissing the Petition as to the second marriage and to the refusal of the Court to declare the said second marriage null and void.

Dated at Windsor, in the County of Windsor, State of Vermont, this 11th day of July, A. D., 1950.

Arthur W. Cook, by (S.) Everett L. Hathorn, his Attorney.

[fol. 32] IN WINDSOR COUNTY COURT

[Title omitted]

BILL OF EXCEPTIONS

The above entitled cause of action came on for Hearing before the Windsor County Court, December Term, 1949, seeking the annulment of two marriages between the said parties. One solemnized at Elizabeth City, North Carolina, February 5th, 1943 and the second solemnized at Elkton, Maryland, December 18th, 1943. The only ground

relied upon is that at the time of each of said marriages the petitionee was the wife of one Alfred H. Mann.

The Findings of Fact by the Court was filed May 27th, 1950, wherein the Court found the first such marriage to be null and void and dismissed the Petition as to the second marriage. The Petitioner took, filed, and was allowed exceptions to the refusal of the Court to find the said second marriage null and void and to the ruling of the Court to dismiss the Petition as to the second marriage.

On June 22nd, 1950 the Court filed a Judgment Order, adjudging the marriage of February 5th, 1943 to be null and void and dismissed the Petition as the marriage of December 18th, 1943 to which order the Petitioner has excepted and such exception is hereby allowed.

All of the Pleadings, Findings of Fact, Orders are hereby referred to and made a part hereof, and cause passed to the Supreme Court.

Dated at St. Albans in the County of Franklin, State of Vermont, this 13th day of July A. D., 1950.

(S.) Raymond L. Miles, Presiding Judge.

[fol. 33] Caption omitted.

[fol. 34] In Supreme Court of Vermont for Windsor County

#1237

Arthur W. Cook, Petitioner,

vs.

Florence J. M. Cook, Petitionee

Judgment

This case comes into this Court upon exceptions by the Petitioner, Arthur W. Cook, to the judgment and decision of Windsor County Court at the December Term 1949 thereof, which judgment was that the purported marriage between these parties of February 5, 1943 to be null and void and to the judgment that the petition for annulling the marriage of December 18, 1943 is dismissed.

The Petitioner, Arthur W. Cook, comes by Everett L. Hathorn, Esqr., his attorney and the Petitionee, Florence J. M. Cook, comes by Fucci and Fucci, Esqrs., her attorneys and the parties through their attorneys are duly heard by this Court at the October Term 1950 thereof.

And it is considered and adjudged by the Court here, at the November Term 1950 thereof, that the judgment of Windsor County Court that the purported marriage between the parties of February 5, 1943 is null and void is affirmed. That the judgment of Windsor County Court that the petition is dismissed as to the marriage of December 18th, 1943 is reversed. It is adjudged that the purported marriage between the parties of December 18, 1943 is null and void.

A true record,

Attest:

(Signed) George C. Brockway, Clerk.

[fol. 35] In Supreme Court of Vermont for Windsor County

Clerk's Certificate as to Date of Judgment

I, George C. Brockway, Clerk of Windsor County Court and Clerk of the Supreme Court of Vermont for Windsor County, and having by law the custody of all files, dockets and records in said Courts, do hereby certify to the following facts, Viz:

That on the 31st day of July, 1950, the case of Arthur W. Cook vs. Florence J. M. Cook, an action for the annulment of marriage, was entered in the Supreme Court of Vermont, from an appeal from the judgment of Windsor County Court;

That this case was heard by the Supreme Court of Vermont at the October Term 1950 thereof and at the November Term 1950 of the said Supreme Court the following judgment entry was made by said Supreme Court; Viz:

> "Judgment that the purported marriage between the parties of February 5th, 1943 is null and void, is affirmed. Judgment that the petition is dismissed as to the Marriage of December 18th, 1943, is reversed. It is adjudged that the purported marriage between the parties of December 18, 1943 is null and void."

That this judgment of the said Supreme Court of Vermont was entered on the records of the Supreme Court of Vermont for Windsor County by me on the 15th day of November, 1950, as directed by the said Supreme Court of Vermont.

Dated at Woodstock in the County of Windsor and State of Vermont this 10th day of February, A. D. 1951.

George C. Brockway, Clerk of the Supreme Court of Vermont for Windsor County.

[fol. 36] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 37] SUPREME COURT OF THE UNITED STATES

No. 373, Misc. —, October Term, 1950.

On petition for writ of Certiorari to the Supreme Court of the State of Vermont.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS; GRANTING PETITION FOR WRIT OF CERTIORARI, ETC.—April 23, 1951.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 30.

It is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: In forma pauperis, Vide 373 Misc. File No. 55,194 Vermont, Supreme Court, Term No. 30. Florence J. M. Cook, Petitioner, vs. Arthur W. Cook. Petition for writ of certiorari and exhibit thereto. Filed February 13, 1951. Term No. 688 O.T. 1950.